A FEW CONSIDERATIONS ON THE SETTLEMENT OF INTERNATIONAL DISPUTES BY MEANS OTHER THAN WAR

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The success of international arbitrations—between 250 and 260 since 1815—and the present frequency of them, combined with the growing consciousness of the economic waste involved in war and in preparation for war, have projected into the field of practical politics the question of a settlement of international disputes by means other than war. The possibility of avoiding war by entering into treaties of arbitration after the dispute has arisen and after diplomacy has failed to adjust the dispute is no longer relied upon as the sole means of averting a resort to force. Coming into being with the First Hague Conference (1899), the Permanent Court of Arbitration at the Hague, which sets up a list of judges from which an arbitration tribunal may be drawn, marked a distinct forward step. Its very existence has not only invited the nations to use arbitration as a means of settling present disputes but has promoted the making of so-called general treaties looking forward to the submission of a certain category of future disputes to arbitration. From May 18, 1899, to March 21, 1910, there were negotiated 133 such treaties. The First Hague Conference likewise set up the Commission of Inquiry, which provides machinery for ascertaining the facts, and in one notable instance at least—the Dogger Bank affair (1904)—has justified its existence.

Another device for abating strife between nations is neutralization. It has been applied to Switzerland, (1815), Belgium (1832) and Luxemburg (1839) long enough to prove its value. The fact that certain great powers stood ready to forbid any violation of the independence or territorial integrity of these states has certainly acted as an effective deterrent to powerful neighbors who might have had an ambition to commit acts of aggression against them. The world is probably destined to see a great extension of this principle not only with regard to small independent powers but possibly with regard

to certain areas or possessions of some of the great powers. But the principle is not capable of universal application. It must be used with discrimination. The progress of the world may be retarded by the neutralization of countries where backward conditions prevail. It may be well to lay down some such principle as this, *e.g.*, that neutralization is applicable with advantage only to countries which have fairly just laws administered with some approximation to justice, an underlying qualification which in fact applies with equal force to permanently successful protectorates for the reason that a protectorate in which there is a constant failure of justice must eventually either be left to be disciplined by foreign powers, the personal or property rights of whose citizens are violated, or must be entered and directly administered by the power which has set up the protectorate.

But extension of the principle of neutralization is necessarily slow and subject to serious limitations; arbitration and actual adjudication are capable of much more general application as a means of avoiding international strife. Arbitration itself has its limitations, arising chiefly from the fact that its governing principle is compromise, and it is because of this that we witness the growing movement for the establishment of a true international court of justice. The establishment of such a court, governed by the principle of res adjudicata, it is felt, would preserve peace between nations more stoutly than any other single institution thus far existing or suggested. Not only would its operation at once begin to create authorative international law in the form of judge-made law, but its very existence would invite the codification of international law and the formal adoption of such law by the nations, just as the Prize Court, adopted by the Second Hague Conference, led to the London Conference (1908-09) which codified the law of prize.

The criticism has been made that the awards of courts of arbitration have been so generally accepted because burning questions have not been submitted to arbitration; that wars which have actually occurred were over differences too serious for peaceable adjustment. There is much force in this criticism, but impartial analyses of past wars by more than one writer show that the criticism is far too sweeping. Moreover, nations which hesitiate to enter a court of arbitration because they regard the interests at stake as too important to subject to the risk of compromise, will be more willing to abide the decision of a true court of justice which shall be governed by estab-

lished international practice, or, in its absence, will at least apply the general principles of justice.

A common source of strife and of the extension of empire in the past has been the demand for protection against violence by the citizen who has gone out from the home country and settled abroad. The persistent repetition of such wrongs has often resulted in the actual extension of foreign dominion over the lawless country. Now, imagine the international court of justice to have come into being. Take the hypothetical case of repeated acts of violence, directed against against our own citizens residing abroad, to all protests concerning which acts, and demand for reparation, a deaf ear is turned. We do not, I take it, want to extend our dominion. But we do insist that our citizens shall enjoy the equal protection of the law no matter where they reside. Diplomacy having exhausted its efforts, the demand for reparation and for the cessation of such acts would, under the new régime, be submitted to the international court of justice. If its findings and its injunction against a repetition of such acts were ignored, the lawless country, instead of being disciplined and possibly occupied by us, would then be policed by an international force—just as Morocco, the Bering Sea and the North Sea are policed to-day—until such country showed itself capable of reëstablishing law and order.

The extension of foreign dominion over such countries has been regarded in the past as among the great inevitable forward movements of a race. When analyzed, it will be found that these and similar cases equally aggravating could be dealt with successfully by an international court backed up by temporary international police or actual, though temporary, international administration. As to the more progressive nations, except where the intent of a country is conquest, there are but few possible causes of friction between them, which, when examined, will not be found susceptible of adjustment by a world's court.